

618156-1 Response to USSN 09/673,411 Advisory Action mailed 08/22/05

REMARKS

Status of the claims

At the issuance of the Advisory Action mailed 08/22/2005, claims 1, 3-4, 13-15, 18-43 and 58 were pending, claims 22 and 24 stand rejected, claims 1, 3-4, 9, 13-15, 18-21, 23, 25-30, 39, 40 and 43 have been objected to. Claims 2, 5-12, 16-17, 44-57 were cancelled in the previous response dated July 6, 2005. The Examiner indicated in the Advisory Action that claims 31-38, 41-42 and 58 will be allowable.

Applicants have now cancelled claims 14, 20-22, 24. Claims 1, 31, 32, and 58 have been amended.

Telephone Interview with Examiner Oh on Tuesday, October 4, 2005

Applicants discussed the Examiner's raising of a new issue (page 3 of the Advisory Action) and raised the issue of the Examiner's statement on page 4 of the Advisory Action, stating that claims 1, 31, 32 and 58 would be allowable if redrawn to the five antiinflammatory ingredients Ketoprofen, Diclofenac Sodium, Ibuprofen, Etodolic Acid, Piroxicam. Applicants pointed out that Examples A and B of the Applicants' specification disclose active ingredient Troxerutine, and Nimesulide, and also pointed out that Examples A and B represented classes of actives that differed from the NSAIDs taught in Example C, namely Troxerutine moderates salivary glands and mucosa function during irradiation, and Nimesulide is a selective COX-2 inhibitor. The Examiner stated in the interview that if all the other issues in the Advisory Action were satisfactorily addressed, the independent claims 1, 31, 32 and 58 would be allowable if redrawn to those actives disclosed in the three Examples. Applicants have therefore amended claims 1, 31, 32 and 58 to so recite those actives disclosed in the three Examples.

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Claim objections to claims 1, 9, and 43

The Examiner has indicated that claims 1, 9 and 43 can be overcome with the proposed modification in the amendment. In the proposed amendment submitted in their response of July 6, 2005, claim 1 was duly amended to recite the phrase "in addition to" replacing the phrase "apart from", claim 9 was cancelled, new claim 59 added replacing claim 9 and reciting dependence according to claim 13, and finally claim 43 was amended to recite the subject "phosphatidylcholine". The Examiner states that such amendments would overcome any objections to claims 1, 9 and 43. Claims 1, 9 and 43 are again presented in the present Listing of the Claims. Applicants assert that these claims are no longer objectionable and respectfully requests Examiner make these claims allowable.

Rejections of claims 20 and 22 under 35 U.S.C. 112, second paragraph

The Examiner has rejected claims 20 and 22 under 35 U.S.C. 112, second paragraph. Both claims 20 and 22 have been cancelled, rendering the rejection moot.

New Issue

The Examiner asserts that the phrase "A pharmaceutical composition comprising, in addition to one or more pharmacologically active ingredients" raises a new issue as regards the scope of independent claims 1, 31, 32 and 58, as amplified in the paragraph Allowable Subject Matters Proposed by the Examiner on page 4 of the Office Action. In the telephone interview referred to above, the Examiner asserted that claims 1, 31, 32 and 58 would be allowed only if limited to recitation of the active ingredients disclosed in the Examples, as further discussed in the next paragraph.

Allowable subject matter proposed by the Examiner regarding claims 1, 31, 32 and 58

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Following his statement that a new issue has arisen regarding the scope of claims 1, 31, 32 and 58, the Examiner has stated that the claims 1, 31, 32 and 58 may be rejected under 35 U.S.C. 112, first paragraph because the specification does not enable other active ingredients unrelated to the currently claimed invention commensurate in scope with these claims. The Examiner has stated that to expedite the prosecution of the case, he will make those claims allowable upon limitation of the claims 1, 31, 32 and 58 to the active ingredients Ketoprofen, Diclofenac sodium, Ibuprofen, Etodolic Acid and Piroxicam.

In the interview referred to above, the Examiner indicated that the subject matter disclosed in all three Examples in the Applicants' specification, at page 3, line 20-page 8, line 10, would be allowable.

Applicants have amended claims 1, 31, 32 and 58 to recite "pharmacologically active ingredients, wherein the active ingredient is Troxerutine, Nimesulide, a selective CO-2 inhibitor, or a non-steroidal anti-inflammatory drug, wherein said non-steroidal anti-inflammatory drug is Ketoprofen, Diclofenac Sodium, Ibuprofen, Etodolic Acid, Piroxicam, or a combination thereof, ".

Therefore Applicants respectfully assert that the claims 1, 31, 32 and 58 allowable. Claims 3-4, 13, 15, 18-19, 23, 25-30, 33-43, and 59 are dependent claims, depending on one of claims 1, 31, 32 and 58, and are therefore also allowable. Applicants therefore respectfully request withdrawal of the rejection of claims 1, 3-4, 13, 15, 18-19, 23, 25-43, 58-59.

CONCLUSION

Applicants respectfully contend that all conditions of patentability are met in the pending claims as amended. All amendments here made are made without prejudice. All claim amendments have been made for clarification and not for patentability. The Examiner is respectfully requested to pass the application to issue.

If Examiner Oh believes it to be helpful, he is invited to contact the undersigned representative by telephone at (312) 408-2535.

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Respectfully submitted,
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